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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Interconnection and Resale Obligations )  
Pertaining to Commercial Mobile )  
Radio Services )

CC Docket No. 94-54

To: The Commission

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COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corporation ("WWC") hereby submits comments on the Commission's *Second Notice of Proposed Rule Making*, FCC 95-149 (April 20, 1995), regarding the interconnection and resale obligations of commercial mobile radio service ("CMRS") licensees.

Through its subsidiaries, WWC is both a provider of cellular service (in both urban and rural areas) and an expectant provider of PCS. Thus, WWC's comments reflect the perspective of both an incumbent CMRS provider and a new entrant.

SUMMARY

WWC supports the Commission's tentative conclusion that a direct CMRS-to-CMRS interconnection obligation is unnecessary. The marketplace is the best arena for deciding whether specific technical or business arrangements warrant such interconnection. WWC also believes that unrestricted resale obligations should not be imposed on *any* class of CMRS provider. If the Commission were to impose such obligations, however, they should be applied even-handedly to all CMRS providers, consistent with the Commission's goal of regulatory parity. Finally, WWC endorses the Commission's tentative conclusion that it should not adopt regulations governing CMRS roaming requirements. Inter-system roaming will occur as the

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result of economic incentive, as it did in cellular service, and thus government regulation is not necessary.

#### **I. CMRS-To-CMRS Interconnection Obligations Are Unnecessary**

WWC supports the Commission's tentative decision not to mandate CMRS-to-CMRS interconnection obligations at this time. Wide access to wireless networks is currently possible through local exchange carriers ("LECs"). Because most wireless calls are between wired and wireless phones, this is currently the most efficient method for obtaining such access; it obviates the need for multiple forms of interconnection.<sup>1</sup> As demand for calls between wireless phones grows, it may become more efficient and cost-effective to establish direct CMRS-to-CMRS interconnection. WWC believes that the marketplace will best determine the terms of such interconnection, absent a finding that the marketplace and existing safeguards are inadequate to protect against abuses. The marketplace, rather than the government, is the most efficient regulator.<sup>2</sup>

Although the Commission tentatively concludes that CMRS-to-CMRS interconnection regulations are not necessary at this time, it indicates that a market power analysis should be used to determine whether such regulations will be needed in the future. In this regard, the Commission requests comment on what geographic and product markets should be used in such

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<sup>1</sup> See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Notice of Proposed Rule Making*, FCC 95-149, at ¶ 30 (April 20, 1995) ("*Second Notice*").

<sup>2</sup> See *Eligibility for the Specialized Mobile Radio Services*, GN Docket No. 94-90, *Report and Order*, 77 Rad Reg. (P&F) 2d 431, ¶ 9 (Mar. 7, 1995) (indicating that interconnection obligations should not be imposed where there are existing safeguards to prevent discriminatory activities).

an analysis.<sup>3</sup> WWC believes that it is premature to discuss the implications of a market share analysis for a market that does not currently exist. Based on the experience of WWC, as well as other cellular carriers, there is no demand for direct CMRS-to-CMRS interconnection at this time. In the absence of any real demand, it is pointless to discuss the market for this product. Parties cannot reasonably comment on the relevant geographic and product markets for a hypothetical product. Any such comments would be purely speculative. Accordingly, WWC urges the Commission to defer any such discussion until such time as the market for CMRS-to-CMRS interconnection develops.

As a market develops for direct CMRS-to-CMRS interconnection, the Commission should abstain from adopting regulations unless and until there is evidence that there is a widespread problem of unreasonable pricing or denial of interconnection. If and when such problems develop, the Commission should first attempt to encourage resolution of the problems through negotiation. Rulemaking should be a last resort. In the absence of evidence of a widespread problem, the Commission should allow inter-system interconnection to develop in response to market forces. As the Commission has recognized, the competitive market achieves “greater benefits . . . than traditional regulation.”<sup>4</sup> Given that (1) CMRS is a competitive industry; (2) wireless access is available via the LEC; and (3) complaints can be resolved through negotiations and complaint proceedings pursuant to Section 208 of the Communications Act, the Commission should forbear from regulating CMRS-to-CMRS interconnection.

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<sup>3</sup> *Second Notice* at ¶¶ 32-35.

<sup>4</sup> *Regulatory Treatment of Commercial Mobile Radio Services*, GN Docket No. 93-252, *Notice of Proposed Rule Making*, 8 FCC Rcd. 7988, 7998 (1993).

## II. Resale Obligations Should Not Be Imposed On Any CMRS Providers

The Commission originally prohibited restrictions on the resale of certain communications services in 1976,<sup>5</sup> reasoning that the elimination of resale restrictions would force “carriers to provide their services at rates which are wholly related to costs.”<sup>6</sup> This prohibition was later extended to cellular service.<sup>7</sup>

In the 1981 wireless marketplace, the Commission only licensed two providers of commercial, interconnected two-way wireless service in each market and required these licensees to allow resale of their service to allow for the development of alternatives to the two facilities-based carriers. In contrast, the CMRS marketplace currently is competitive and will become more so with the introduction of new facilities-based providers everywhere.<sup>8</sup> In any given market, there will be at least eight CMRS licensees capable of providing wireless voice communications.<sup>9</sup> Under these circumstances, there are very few barriers to facilities-based entry. Competition between these licensees will drive rates toward costs and, thus, there is no need to create additional, “artificial” competition in the form of resellers. Consumers will have

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<sup>5</sup> *Resale and Shared Use*, Docket No. 20097, *Report and Order*, 60 FCC 2d 261 (1976) (subsequent history omitted).

<sup>6</sup> *Id.* at 298.

<sup>7</sup> *Cellular Communications Systems*, CC Docket No. 79-318, *Report and Order*, 86 FCC 2d 469, 510 (1981), *recon.*, 89 FCC 2d 58, *further recon.* 90 FCC 2d 571 (1982), *petition for review dismissed sub nom. United States v. FCC*, No. 82-1526 (D.C. Cir. Mar. 3, 1983).

<sup>8</sup> *Regulatory Treatment of Commercial Mobile Radio Services*, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd. 1411, 1468-69, 1472, 1499 (1994).

<sup>9</sup> Specifically, in each area there will be two cellular licensees, as many as six broadband PCS licensees, and in some cases one or more Enhanced SMR licensees.

the ability to select among several providers of CMRS at competitive prices. Accordingly, WWC urges the Commission not to impose a resale obligation on all CMRS providers and, in the interest of regulatory parity, to remove the current resale obligation from cellular providers.

Given the effective lack of entry barriers to facilities-based competition, the Commission should not impose a resale obligation on CMRS providers. This should be the case even in those areas — principally rural or thinly populated — actually served by only a limited number of CMRS operators. The number of actual providers in such cases is determined by market forces, such as the demand for service and the cost of providing it. Requiring CMRS providers to allow resale in such areas will skew the market and may in some cases *diminish* the availability of service.<sup>10</sup> The existence of potential facilities-based competition from the seven or more other CMRS licensees authorized to serve the area is an adequate deterrent to unreasonable pricing.

In the event the Commission decides to impose a resale obligation on CMRS licensees, the obligation should be imposed uniformly on *all* CMRS licensees. Applying this obligation to select types of CMRS licensees would violate the Commission's policy of regulatory parity. In this regard, WWC opposes any proposal which would exempt new emerging technology licensees, such as PCS licensees, from a resale obligation. Thus, if a resale obligation is imposed, a cellular provider should be allowed to resell PCS service and vice versa.

WWC recognizes one limitation, however, on the resale obligation. Specifically, licensees should be allowed to restrict resale by facilities-based competitors three to five years

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<sup>10</sup> For example, a CMRS licensee might be willing to extend service to a thinly populated area if it can count on selling service at a retail rate to generate sufficient revenues to cover the cost of extending service. If mandatory resale results in a revenue loss (due to the sale of the service at a lower wholesale rate), the carrier may have insufficient revenue to justify providing the service.

after they are issued a license.<sup>11</sup> A five year resale obligation was sufficient in cellular and extending the resale obligation beyond this time discourages competitors from commencing service as soon as possible.

### **III. Regulations Regarding Roaming Between CMRS Systems Are Not Warranted At This Time**

WWC supports the Commission's tentative conclusion that regulatory action is not required at this time to ensure that CMRS providers will support roaming between their respective systems.<sup>12</sup> Inter-system roaming should develop without regulatory intervention. The ability of a customer to roam from its provider's system to another system increases subscribership and marketability of service. A cellular licensee has little incentive to deny access to its system by another CMRS subscriber, unless technologically infeasible, because it would decrease the marketability of its service and deprive it of roaming revenue generated by the customer's use of its system. In short, the marketplace will force the development of inter-system roaming.

Given the experience with cellular roaming, CMRS licensees will find that ubiquitous roaming is a necessity and will press equipment manufacturers to develop the technology necessary for such roaming. In this regard, WWC agrees with CTIA that PCS subscribers will have access to cellular systems through the use of dual mode 800 MHz/2 GHz phones. Contractual arrangements between PCS and cellular licensees will be created to allow both licensees to benefit from the use of these phones (*i.e.*, roaming revenue and marketability of service).

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<sup>11</sup> Facilities-based competitors should be defined as operational licensees with overlapping markets.

<sup>12</sup> *Second Notice* at ¶ 54.

licensees to benefit from the use of these phones (*i.e.*, roaming revenue and marketability of service).

It would be premature at this time to impose technical standards with regard to roaming. Because roaming benefits all licensees involved, the marketplace will determine the most efficient method for providing such roaming capability. Adopting technical requirements while many CMRS services are in their “nascency” may hinder the provision of roaming service by requiring that it be provided in a manner which is not cost-efficient. As with cellular, the marketplace will drive the development of a common interface to allow CMRS-to-CMRS roaming. Further, equipment vendors will develop common protocols to ensure access between different types of systems.

“Smart Card” technology, for example, currently is being developed to allow a customer to use a borrowed or rented handset to access any wireless network in the country. This “Smart Card” is similar to a credit card and will contain subscriber information similar to the Home Location Register (“HLR”) and Visited Location Register (“VLR”) currently used for cellular roaming. A user will simply insert the Smart Card into a handset and, once it performs a specific register command, the user will be capable of making and receiving calls via the handset, regardless of the type of CMRS service on which the handset operates.


## **CONCLUSION**

For the forgoing reasons, WWC supports the Commission’s tentative conclusions that direct CMRS-to-CMRS interconnection obligations and CMRS roaming requirements are

unnecessary at this time. WWC also believes that unrestricted resale obligations should not be imposed on *any* class of CMRS provider.

Respectfully submitted,

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